KOREA

In 1998, the U.S. trade deficit with Korea was $7.4 billion, a change of $9.3 billion from the $1.9 billion trade surplus the United States had with Korea in 1997. In 1998, Korea was the United States' ninth largest export market. In 1998, merchandise trade between the United States and Korea totaled $40.4 billion, compared with $48.3 billion for 1997. U.S. exports to Korea in 1998 were $16.5 billion -- a 34.0 percent drop from the 1997 figure of $25.1 billion. U.S. imports from Korea in 1998 were $23.9 billion -- a 3.4 percent increase from the 1997 figure of $23.2 billion. In 1998, U.S. foreign direct investment accounted for almost one-third of the $8.8 billion in total FDI coming into Korea.

Overview

Korea is one of the United States' major trading partners, but it also has been described as one of the toughest markets in the world for doing business. In response to the financial crisis and recession that began in 1997, Korea implemented structural reforms in the financial, corporate, labor and government sectors aimed at putting the Korean economy on a more open, market-oriented basis. Korean President Kim Dae Jung has made strong public statements about the need to attract foreign investment, accept imports, and restructure the corporate conglomerates, or *chaebols*, in Korea. The Korean Government has made efforts to break the ties between government, banks, and the *chaebols* and to push them to restructure. These linkages, central to Korea's development model for more than 30 years, have impeded competition and market access, both in Korea and in other markets. If Korea's reforms are fully and faithfully implemented, trade and investment barriers should be reduced. In 1997 and 1998, Korea did implement some reforms, for example, in the financial services sector, but resistance to key trade reforms remains, and many issues have arisen on Korea's compliance with its international obligations.

The fall in the *won* (by approximately 50 percent between November 1997 and January 1998), the financial crisis and the recession caused sharp declines in corporate investment, domestic consumption and imports in 1998. Imports are expected to resume growth in 1999 as the economy begins to recover, but Korea is expected to run both global and bilateral trade surpluses again.

IMPORT POLICIES

Tariffs and Taxes

Korea bound 91.5 percent of its tariff line items in the Uruguay Round negotiations. Korea's average tariff was 7.9 percent in 1998, compared with 8.44 percent in 1997. Korea's tariffs on all agricultural products, except rice (HS 1006), are bound. Between 1995 and 2004, Korea will implement its Uruguay Round commitments to lower duties on more than 30 agricultural products of primary interest to U.S. exporters. These products include intermediate and high-value items such as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen French fries, and breakfast cereals.

Under its Uruguay Round commitments, Korea also established tariff-rate quotas (TRQs) that will either provide for minimum access to a previously closed market or maintain pre-Uruguay Round access. (See also "Quantitative Restrictions, TRQs and Import Licensing.") In-quota tariff rates are to be maintained at zero or low levels, but over-quota tariff rates on some products are prohibitive. Specifically, natural and artificial honey are assigned an over-quota rate of 257 percent; skim and whole milk powder, 198 percent; barley, 342 percent; barley malt, 284 percent; potatoes and potato flakes, over 300 percent; and popcorn, 665 percent.

Korea

Duties are still very high on a large number of high-value agricultural and fishery products. Korea imposes tariff rates above 40 percent on products of interest to U.S. suppliers, including shelled walnuts, table grapes, beef and a variety of citrus fruits. Products subject to a 30 percent or higher tariff rate include certain meats, most fruits and nuts, many fresh vegetables, starches, peanuts, soups, various vegetable oils, juices, jams, peanut butter, beer and some distilled spirits and dairy products.

Korea is in the process of reducing tariffs to zero on most or all products in the following sectors: paper, toys, steel, semiconductors and farm equipment. Korea is harmonizing its chemical tariffs to final rates of 0, 5.5, or 6.5 percent, depending on the product. From pre-Uruguay Round levels, tariffs on scientific equipment are being reduced by 65 percent. On textile and apparel products, Korea has harmonized and bound most of its tariffs to the following levels: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods and 35 percent for apparel.

U.S. firms in a number of sectors continue to report that the combination of current tariffs and value-added taxes for agricultural and manufactured products is often sufficient to either keep imports out of the Korean market or to make their prices uncompetitive. For example, the Korean Government assesses higher excise taxes on Western-style distilled spirits than on traditional, Korean-style spirits, *e.g.,* Soju. While Korean Soju is assessed a liquor tax of 35 percent plus an education tax of 10 percent, imported whisky and brandy face a liquor tax of 100 percent and a 30 percent education tax. Other Western-style distilled spirits are assessed a liquor tax of 80 percent plus an education tax of 30 percent. On July 31, 1998, a WTO dispute settlement panel found the Korean tax measures on alcoholic beverages to be inconsistent with GATT Article III.2 (national treatment). On January 18, 1999, the WTO made a final ruling against Korea's appeal of the decision. The U.S. and Korean Governments are discussing the means for eliminating the discriminatory taxation in Korea.

Another example of Korea's tariff/tax barriers is in the area of motor vehicles. Imported vehicles are subject to a tariff rate of 8 percent, more than three times the U.S. tariff. Korea then levies multiple, cumulative high taxes on top of the 8 percent applied tariff. Three of these taxes are based on engine size. Although Korea agreed to eliminate some of its motor vehicle taxes and to reduce others under the 1998 Memorandum of Understanding, the tax and tariff burden on imported cars with 2000 cc or larger engines remains significantly greater than the tax burden on their domestic equivalents.

Korea uses "adjustment tariffs" at the HS four-digit level to protect domestic producers against import surges. In 1999, Korea renewed adjustment tariffs on 29 of the 38 items from 1998 for another year, but reduced the tariff rates. Among the 32 remaining items, 14 are seafood (HS 03 and 16 categories), four are textiles (HS 50 through 63 categories), five are mushrooms and bracken (HS 07 category), and two are wood products (HS 44 category). While Korea has not imposed any new adjustment tariffs since 1994, tariff rates have been maintained at the "adjusted" or increased rates. For example, in December 1997, Korea raised the applied tariff on processed rice (HS 1904) from eight to 50 percent. The bound tariff rate was set at 57.6 percent in 1998 and will decrease to 54 percent in 2001.

Korea uses "adjustment tariffs," or tariff "snapbacks," at the HS four-digit level to protect domestic producers against import surges. In 1997, Korea committed to the IMF that it would eliminate the tariff adjustment mechanism on 24 of the 68 tariff line items on which it had previously used tariff adjustments. While Korea did eliminate the "adjustment" mechanism for these line items, it maintained tariff rates at the "adjusted" or increased rates, *e.g.*, on processed rice. In 1999, Korea renewed the "adjustment tariff" mechanism on 32 of the 38 items on which the mechanism was used in 1998. Among the 32 items, 14 are seafood (HS 03 and 16 categories), four are textiles (HS 50 through 63 categories), five are mushrooms and bracken (HS 07 category), and two are wood products (HS 44 category).

Korea

Nontariff Measures

Import Diversification Program

Korea maintains an import diversification program, which as of December 1997, barred imports of 113 items from Japan. Under the IMF stabilization package for Korea, the Korean Government agreed to eliminate this program in three tranches. The first two tranches removed 65 items from the list. Imports of the remaining 48 items will be freed on June 30, 1999, when the program is completely eliminated.

Quantitative Restrictions, TRQs and Import Licensing

Korea implements quantitative restrictions through its import licensing system. A government export-import notice lists products that are restricted or prohibited. Most imported goods no longer require approval, but some tariff line items (mostly agricultural and fishery products) are restricted for import, that is, they are subject to quotas or TRQs with prohibitive over-quota rates.

After a 1989 GATT panel ruling against Korea's measures on beef, Korea agreed to phase out its balance-of-payment restrictions on beef. Subsequently, in 1990, and in July of 1993, the United States and Korea concluded Records of Understanding (ROUs) under which Korea agreed to annual, increasing minimum market access levels for beef imports through 1995. The 1993 agreement also guaranteed direct commercial relations between foreign suppliers and Korean retailers and distributors and provided that a growing volume of beef be sold through that channel instead of through a quasi-governmental agency. Specifically, the agreement provided for (1) an increase in the minimum annual quotas; (2) an increase in the number of Korean meat outlets and retailers that can undertake commercial transactions with U.S. exporters without Korean Government intervention -- the Simultaneous Buy/Sell (SBS) system; (3) dramatically increased annual SBS sub-quota amounts and (4) a ceiling on the mark-up levied on the duty-paid price of imported beef. Australia and New Zealand – the other two major suppliers of beef to Korea – also entered into identical agreements on beef trade with Korea.

In December 1993, the provisions of the July agreement, including the increasing, annual minimum market access provisions, were extended after the United States, during the Uruguay Round, agreed to Korea's request to extend the phase-out period for balance-of-payment restrictions on beef to December 31, 2000. In short, the United States agreed to allow Korea to maintain its quantitative restrictions on beef imports after a GATT panel ruled that Korea had no legal right to maintain such restrictions, and in return, the United States was guaranteed increasing access to Korea's beef market through minimum quotas that expanded over time.

Pursuant to section 306 of the Trade Act, the USTR is monitoring Korea's implementation of its commitments on beef imports. The U.S. and Korean Governments have met quarterly on the specifics of Korea's implementation record on the 1993 agreements. In 1997, Korea did not meet its annual commitment to import 167,000 metric tons of beef. In 1998, Korea fell short of its 187,000 metric ton quota by as much as 60 to 80 percent.

U.S. Government officials have repeatedly raised the beef issue in an attempt to establish a market-driven beef import system in Korea by eliminating government impediments to the entry and distribution of foreign beef. In September and November of 1998, the U.S. and Korean Governments held two rounds of talks, and in January 1999, sat down again in Washington to try to reach agreement on such a plan. As no agreement was reached over the course of these talks, the U.S. Government requested WTO dispute settlement consultations on February 1. Consultations were held on March 11 and 12 in Geneva. The U.S. Government will take the steps necessary to resolve this matter.

Under the U.S.-Korea 1993 ROU and under Korea's Uruguay Round commitments, the Korean Government committed to liberalize, by January 1, 2001, its quantitative restrictions on the eight remaining items subject to balance-of-payments protection. These items consist mainly of live cattle (dairy and beef) and beef products (HS 0201 and 0202). Korea's quantitative restrictions on rice will be liberalized by January 1, 2004.

Korea's administration of its TRQs on certain products raises additional market access problems. Per industry input, the U.S. Government has raised concerns about Korea's process for administering its quotas on rice and its TRQs, particularly those on fresh oranges, value-added soybean products and value-added corn products.

On rice, a state trading organization imports the product through the WTO-mandated minimum access program, while the Korean Government assumes immediate control upon its entry into Korea. Thus, the Korean Government maintains full control over both the distribution and end-use of rice. This process restricts access to the Korean market for high-quality U.S. table rice. The Korean Government has repeatedly stated that it will not allow imported table rice to be directly marketed to Korean consumers.

On oranges, as mentioned above, in 1997, the quantitative restrictions on fresh oranges were liberalized to permit out-of-quota imports, which are assessed a duty of 74.5 percent in 1999, with annual reductions that will reach 50 percent (the current in-quota rate) in 2004. The in-quota quantity for 1999 will be 33,674 metric tons and will be expanded at an annual growth rate of 12.5 percent through 2004. Korea has designated its only citrus cooperative as the sole importer of the TRQ in-quota quantity of fresh oranges. The United States has repeatedly expressed its concern that such an arrangement creates a conflict of interest.

On value-added soybean and corn products, the Korean Government continues to control allocation of the in-quota quantities. By aggregating raw and value-added products into the same TRQ, the Korean Government restricts access to the Korean market for value-added products, such as corn grits and soyflakes, while allowing entry of only the companion raw materials under the in-quota quantity.

Import Clearance Procedures

U.S. suppliers of food and agricultural products continue to encounter trade-impeding practices in Korean ports of entry, including on products for which market access was liberalized under bilateral or multilateral trade agreements. Korea has made changes to its import clearance procedures over the last year, but clearance times are still excessively slow and procedures remain arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days, while in Korea, import clearance for new products still typically takes two to four weeks, and sometimes up to two months (except for perishable fruits and vegetables, which take a maximum of five days).

The Korean Ministry of Health and Welfare (MHW), including its Korea Food and Drug Administration (KFDA), and the Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service (NPQS) and National Veterinary Research and Quarantine Service (NVRQS), account for the greatest delays. These Ministries share responsibility for administering Korea's food-related laws and regulations, which comprise requirements for ingredient listing by percentage and manufacturing process information, phytosanitary rules and standards and conformity assessment procedures (sampling, inspection and testing) in the Korean Food and Food Additives Codes. Both MHW and MAF impose numerous requirements that prohibit access or delay import clearance while adding costs to importers.

In April 1995, the U.S. Government requested WTO dispute settlement consultations after U.S. citrus rotted at a Korean port. In response, Korea provided expedited clearance (five days) for fresh fruits and vegetables. Between April 1995 and January 1997, the United States had a number of rounds of WTO consultations with Korea on the additional reforms it had promised.

At the end of 1996 and in 1997, Korea made more changes to its import clearance procedures. Specifically, Korea (1) instituted a new sampling, testing and inspection system; (2) eliminated mandatory incubation testing for California fruit; (3) used the concept of scientific risk assessment to develop quarantine pest lists for use in determining fumigation requirements and (4) revised some of the Korean food additives standards to bring them into closer conformity with CODEX Alimentarious Commission standards. Some problems remain. For example, the method for testing cheese in Korea has not been standardized, resulting in container loads being dumped.

In WTO dispute settlement consultations in January 1997, the Korean Government also indicated that it would no longer require as conditions for import clearance, (1) sorting for separation of spoiled produce; (2) manufacturing process information and (3) ingredient listing by percentage for all ingredients. However, some Korean port inspectors continue to require manufacturing process information and ingredient listing by percentage for all ingredients**,** indicating a general lack of understanding of their own regulatory requirements. Furthermore, some of the changes Korean officials are implementing do not adequately address U.S. concerns. For example, Korea's interpretation of the term "quarantine pest" allows arbitrary application of regulations affecting the entry of fresh produce. Korea continues to require incubation testing for Florida fruit, even when shipments are accompanied by an APHIS certificate indicating that the fruit originated in a "pest-free" area. Korea also denies entry of fresh potatoes from several U.S. states although this phytosanitary ban has not been scientifically proven to be necessary.

In 1998, Korea announced its intention to bring its Food Code standards into closer conformity with CODEX standards. This is significant for U.S. companies that have had entry problems due to restrictive standards. Also in 1998, Korea revised its microorganism standards for meat, and agricultural chemical standards for fresh fruit to bring them into conformity with international standards defined by the CODEX Alimentarius Commission. In June of 1998, Korea abolished government-mandated shelf-life requirements for 66 food items, including sterilized milk products. The mandatory shelf-life requirement remains on 21 food items, mostly instant food items such as lunch box, tofu and certain other products whose composition deteriorates quickly. In 1998, the KFDA also initiated a project to bring Korea's Food Codes and food labeling standards into conformity with international standards by the end of 1999.

The United States will continue its dialogue with the Korean Government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and consistent with international norms. (See also "Standards and Conformity Assessment Procedures.")

<u>Customs Procedures</u>

U.S. firms continue to encounter border entry barriers in the form of Korean Customs Service (KCS) decisions to arbitrarily and suddenly change the customs classification and border treatment (*i.e.*, tariff level) of certain products. For example, the KCS has severely restricted U.S. exports of potato products to

Korea by abruptly changing the classification of such products from a Harmonized System (HS) category subject to only a tariff, to an HS category subject to a restrictive TRQ with a prohibitive over-quota tariff rate. The U.S. Government is seeking written confirmation that the KCS will enter blended potato flakes and other blended products under the proper HS classification, and therefore apply to them non-restrictive border treatment. The U.S. Government will continue to carefully monitor the KCS's treatment of blended food products. U.S. exports of soda ash also have been misclassified, thus resulting in a higher tariff.

The KCS also rejects customs clearance applications on administrative grounds (wrong print, font size, erasure marks on application, etc.), thereby delaying the official start of the customs clearance process. The KCS has claimed that it will try to speed up clearances by (1) reducing the number of import products that require confirmation that all import requirements have been met and (2) establishing a computer network to link the KCS with the other involved government agencies to speed up confirmations.

Korean regulations also often require a local trade association consisting of local competitors to certify or approve import documentation. In addition to requiring the importer to pay a processing fee which helps fund the association, this rule requires importers to submit business confidential information to their local competitors.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing and Certification)

Korea maintains standards and conformity assessment procedures (sampling, inspection, testing and certification), *e.g.*, in the Korean Food and Food Additives Codes, that deviate from international norms, do not appear to be based on scientific risk assessment and specifically target imports. In addition, the Korean Government continues to enforce or maintain trade-impeding import clearance requirements on proprietary information (ingredient listing by percentage and manufacturing process information) and has not fully addressed U.S. concerns about other sanitary and phytosanitary barriers to entry. (See also “Import Clearance Procedures.”)

U.S. industry also cites Korea’s subjective application of Korean Food Code rules to non-traditional foods as a barrier to the introduction of some U.S. products, such as ostrich, emu and alligator meat, to the Korean market. Under the Korea Food Code, raw materials originating from non-traditional animals, plants, etc., cannot be used for food manufacturing, processing and cooking if such materials are deemed inappropriate for eating in Korean custom or tradition or in the view of the KFDA.

Efforts to obtain market access for in-shell walnuts thus far have been stymied by Korea’s insistence on the establishment of an onerous and unnecessary phytosanitary preclearance inspection program. By conducting pest risk analysis, the United States also continues its efforts to overcome existing phytosanitary-based import bans on fresh potatoes, apples, pears and stone fruit.

Korea continues to maintain government-mandated shelf-life requirements for items such as dairy products packaged in table-top cartons and bottled water.

Korean Government agencies require pre-approval for cosmetics, food additives, pharmaceuticals, chemicals, electronics, personal communication services and many other products. Other countries require pre-approval for some products, but the range of products affected is exceptionally large in Korea, and companies must submit documentation that is extraordinarily detailed. Furthermore, the information provided in the prior-approval/certification process is not protected and sometimes is "leaked" to the press. This incites opposition to imported products.

U.S. cosmetic producers cite Korea's duplicative testing requirements as an impediment to trade. Korea requires animal testing and does not accept a certificate of analysis from a U.S. firm as a substitute. (See also “Cosmetics.”) As of January 1, 1998, the KFDA abolished the annual testing requirement for imported cosmetics and authorized importers to perform the required self-testing, provided that they maintain records for each batch/shipment.

U.S. pharmaceutical companies report significant delays in obtaining final approval from MHW for the local sale of products developed outside of Korea within the last three years. New products developed in Korea can proceed directly from phase 1 to phase 3 clinical trials, but conducting phase 3 clinical trails still constitutes a prohibitive expense for foreign firms. For products developed outside of Korea, KFDA is moving toward allowing phase 3 clinical trials to begin in Korea before a Certificate of Free Sale (CFS) is issued from the country of origin. However, the written regulations do not yet reflect progress in this area, and questions remain about what sort of documentation is required in order to waive the requirement for a CFS. Also, Korean health authorities still require the repetition of phase 3 clinical trials in Korea when such trials have been or are being conducted in other markets. Korea's requirements for redundant phase 3 clinical trials delay the introduction of foreign developed products into the Korean market by about two years. As MHW has no system to differentiate between U.S. prescription and non-prescription (over-the-counter) drugs and nutritional supplements, both types of pharmaceuticals are subject to the same rigorous testing and approval process. (See also “Lack of Intellectual Property Protection” and “Pharmaceuticals.”)

Korea's motor vehicle standards and certification regulations are complex and excessive. In the 1998 MOU on autos, Korea agreed to adopt a self-certification system for automobiles by no later than the year 2002. Before that date, Korea agreed to simplify and streamline its standards and certification rules and procedures, including through the allowance of motor vehicles in Korea that conform to the U.S. standard on headlamps. The U.S. Government is closely monitoring Korea's compliance with the standards and certification provisions in the 1998 MOU. The two governments will hold their first formal consultation on the implementation of this agreement in April of 1999.

Under the IMF program, the Korean Government has committed to accelerate harmonization of its certification procedures with WTO standards and to strengthen their implementation. Legislation to this effect is pending in the National Assembly and revisions to a number of regulations and guidelines have already been made. Revisions made thus far do not address the core U.S. concerns on bilateral trade issues in product areas such as cosmetics and pharmaceuticals.

Labeling Requirements

U.S. exporters cite Korea’s nontransparent and burdensome labeling requirements as barriers to entry. These requirements are often arbitrarily enforced. For example, batch codes and the date of manufacture must be included on each individual Korean label. In 1998, vaguely worded labeling regulations issued by several Ministries generated the greatest number of trade-inhibiting problems for imported food products. Such problems generally resulted from local officials’ interpretation of the regulations and typically led to costly and unnecessary repackaging and relabeling before the product could clear import inspection.

Importers of internationally recognized food products have been instructed to rewrite their English language labels because some inspectors viewed certain English terminology to be too confusing for the average Korean consumer who has limited knowledge of international definitions and the English language. For example, Korean labeling standards define chocolate according to a definition germane only to Korea. These labeling standards, now under official review, enabled a lone field inspector to block entry of a world renowned chocolate product based on his belief that the product's description, "chocolate," would confuse Korean consumers.

The U.S. Government has worked with Korean Ministry officials to accept foreign language labels if they met the regulatory labeling requirements of the originating country. The Korean Government is planning an overall revision of its food labeling standards by December of 1999.

The Ministry of Environment has proposed new packaging and labeling standards on food. Implementation of these standards has been delayed until 2001 and the U.S. Government will continue to monitor this issue carefully.

Labeling standards are not yet required for genetically modified organisms (GMO), mainly because the average consumer has not yet identified this issue as significant. However, special interest groups became more active on this issue in the latter half of 1998, mirroring the growing movement in Europe. At present, government scientists view GMO products as safe, but additional scientific data will be needed to support their writing of science-based labeling standards.

GOVERNMENT PROCUREMENT

Korea began implementing the WTO Agreement on Government Procurement (GPA) on January 1, 1997. As part of its GPA commitments, Korea agreed to cover procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments and some two dozen government-invested companies. The annexes to Korea's GPA membership package specify the value thresholds in SDR terms for coverage of procurement contracts under the Agreement.

Korea's coverage under the GPA does not extend to procurement related to, among other things, national security and defense, Korea Telecom's purchases of telecommunications commodity products and network equipment and procurement of satellites (for five years from entry into force of the GPA for Korea). Purchases by the Korea Electric Power Corporation (KEPCO) are covered, with the exception of certain equipment.

The GPA enables suppliers to pursue alleged violations of the Agreement through domestic bid challenge procedures. Accordingly, the Korean Ministry of Finance and Economy (MOFE) has established an International Contract Dispute Mediation Committee to deal with any foreign supplier allegations that Korean procuring entities have not complied with GPA provisions. MOFE has not received any bid challenges under these procedures since the GPA took effect. However, the Embassy has received an increasing number of complaints from U.S. firms who experienced irregularities in the bid tendering procedures conducted by various GPA-covered government entities. The U.S. Government is monitoring these cases to determine whether further action is warranted.

The Supply Administration of the Republic of Korea (SAROK), formerly the Office of Supply (OSROK), is responsible for the purchase of goods and incidental services required by central and sub-central government entities. SAROK also handles government construction contracts and related services and the stockpiling of raw materials.

SAROK estimated that its total procurement of goods and services, both GPA-covered and non-GPA-covered, reached $3.8 billion in 1998. Approximately $1.3 billion was subject to international tendering procedures in accordance with GPA rules. SAROK identified the following categories of products and equipment as open to international competitive bidding in 1998: medical, educational and sewage treatment equipment; scientific testing instruments and helicopters. In addition to purchases of goods and services, SAROK estimated that it will handle construction contracts valued at $6.1 billion in 1998.

Not all GPA-covered procurement is handled by SAROK. In the case of Korean Government-owned commercial enterprises (listed in Annex 3 of Korea's accession agreement), procurement is handled in-house, with these entities following the same GPA rules. Thus, tendering under open formal procedures is required.

Since 1997, U.S. companies have indicated that the Korean Airport Construction Authority (KOACA), which is responsible for managing procurement for Inchon airport, discriminates against foreign firms bidding for projects. KOACA procurement practices, such as domestic partnering and certain licensing requirements, are in violation of WTO GPA requirements and restrict the ability of U.S. firms to participate in bidding opportunities and to win contracts.

In 1997, 1998 and 1999, U.S. officials raised this issue in the WTO Government Procurement Committee and in bilateral consultations. Korea's response has been to claim that KOACA is not covered by the GPA, despite Korea's representation to the United States in its 1991 GPA negotiations that it would cover all entities responsible for airport procurement. As Korea's position on this issue remains unchanged, the U.S. Government in February 1999 requested WTO dispute settlement consultations on Korean airport procurement and held these consultations in March. The U.S. Government will take the steps necessary to resolve this matter.

EXPORT SUBSIDIES

In the past, Korea has aggressively promoted exports through a variety of policy tools. However, in the WTO, Korea committed to phasing out those programs not permitted under the WTO Agreement on Subsidies and Countervailing Measures.

Under its IMF stabilization package, Korea committed to eliminate four trade-related WTO-prohibited subsidies. Specifically, in Korea's Tax Exemption and Reduction Control Act, the following provisions were eliminated: (1) reserves for export loss; (2) reserves for overseas market development; and (3) tax incentives for the encouragement of investment. In addition, through an administrative decree, Korea eliminated the Ministry of Information and Communication's program to promote the use of mini-computers. In July 1998, Korea committed to rationalize its overall subsidies program, including by notifying the WTO of the contents of 19 subsidies and by reducing the benefits available in 68 non-WTO-actionable subsidies.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Korea has made significant efforts to strengthen its intellectual property rights (IPR) laws and enforcement, although there have been inconsistencies with respect to court interpretation and rulings on the law. In 1997 and 1998, Korea was listed on the Special 301 "watch list."

Korea

Pursuant to its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Korea passed four acts (patent, utility model, design and trademark) in December 1995, and implemented new copyright, computer software and customs laws in 1996. In 1997, the trademark law was amended to afford protection to three-dimensional trademarks (registered in Korea only). On March 1, 1998, the revised trademark law became effective and the new patent court was established. Korea is implementing developed-country IPR standards in many areas, but still claims developing country status with respect to its TRIPS obligations overall. The U.S. Government has made it clear to the Korean Government in the negotiations on the Bilateral Investment Treaty (BIT) that the issues raised with respect to Korea's TRIPS consistency must be resolved before we can sign the BIT.

Korean patent law is fairly comprehensive, offering protection to most products and technologies. In July 1997, the Patent Act and Utility Model Act were amended to streamline the examination and appellate process and to boost monetary penalties for cases of patent infringement from 20 million *won* to 50 million *won.* U.S. industry believes that deficiencies remain in the interpretation of claims and in the treatment of dominant and subservient patents. Additionally, Korea's recognition of international ownership of foreign patents has been inconsistent, and approved patents of foreign patent holders have been vulnerable to infringement.

The Korean Industrial Property Organization (KIPO) took the lead in amending Korean laws to address U.S. concerns about restrictions on patent term extension for certain pharmaceutical, agrochemical and animal health products, which are subject to lengthy clinical trials and domestic testing requirements. In the past, pharmaceuticals' patent term protection for the clinical trial period was lost if that period took less than two years. In the fall of 1998, the National Assembly passed legislation amending these restrictive provisions.

Although a law permitting patent extension was adopted on January 1, 1999, Korea still has failed to provide full retroactive protection to existing copyrighted works as required under the TRIPS Agreement. The copyright law only provides protection for cartoon characters that possess artistry and creativity. The trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with KIPO. Korean courts, in recent decisions, have consequently declined to extend protection to those cartoon characters and certain textile designs.

There has been some improvement over the past several years on the removal of pirated and counterfeit goods from the Korean market. Through administrative guidance, Korea curtailed the copying and selling of certain U.S. copyrighted works created before 1987. Korea also established "special enforcement periods," during which significant resources are devoted to raids, prosecution and other copyright enforcement activities. The High Prosecutor's Office reported that from January to October 1998, 17,369 IPR infringement cases were reported (up 3.4 percent from 1997), and 1,334 individuals were arrested (up 32 percent from 1997). Police and prosecutors continue to make "special" IPR raids twice per month. U.S. businesses and industry groups have reported that software piracy by large Korean corporate end-users remain a significant problem. Piracy for home use and by educational institutions reportedly continues to be a problem as well, and U.S. firms report that they still have difficulties bringing law enforcement action against "small-scale" infringers. The Korean Government, however, has taken significant steps to ensure that it is no longer using illegal software.

Although Korean laws on unfair competition and trade secrets provide some trade-secret protection in Korea, they remain deficient. For example, U.S. firms, particularly some manufacturers of chemicals and candy, face continuing problems with government regulations requiring submission of very detailed product information (*i.e.*, formulae or blueprints) as part of registration or certification procedures. U.S.

firms report that although the release of business confidential information is forbidden by Korean law, submitted information has not been given sufficient protection by government officials and, in some cases, has been made available to Korean competitors or to their trade associations.

The U.S. pharmaceutical industry continues to experience data protection problems. In fact, the protection of proprietary test data submitted by pharmaceutical companies against “unfair commercial use” by competitors, as called for in the TRIPS Agreement, has been weakened through the elimination of the re-examination period that provided *de facto* data protection for four to six years. There also has been a lack of coordination between health and safety and IPR officials, allowing products that infringe existing patents to be approved for marketing. The U.S. Government will continue to press the Korean Government on IPR protection for pharmaceuticals until U.S. concerns are fully and satisfactorily addressed.

Korea has taken steps to reduce the number of cases in which Korean companies register trademarks similar to U.S.-owned marks. But cases of unauthorized registration -- so-called “sleepers” are still a problem. "Sleepers" are marks filed and registered by Koreans without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process. A new trademark law, which became effective March 1, 1998, contains provisions for prohibiting the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject registrations made in “bad faith.”

Until 1998, trade dress had been only partially protected under both the prevention of unfair competition law and the design law. The design law grants protection only after registration is completed. However, the amended trademark law now allows the registration of three-dimensional marks and trade dress.

Korea has long been a source of exports of infringing goods. Because textile designs are not fully protected, some Korean companies pirate U.S.-copyrighted textile designs and export them to third countries, competing with genuine U.S.-produced goods. The U.S. Government continues to urge Korean Government officials to increase their efforts toward stopping exports and imports of counterfeit goods to and from third countries.

Recent amendments to the Design Act became effective on March 1, 1998. Under the new amendments, KIPO made industrial designs more competitive by extending the duration of the design right and simplifying the design application procedures. A new design registration system was introduced to enable applications for certain goods to be registered without examination.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (See also “Investment Barriers.”)

Construction

The construction and engineering markets in Korea have been open to foreign competition since January 1, 1996. On January 1, 1997, foreign companies also became eligible to bid on public projects including the massive social overhead capital (SOC) projects designed to improve basic infrastructure in Korea. Most foreign construction and engineering companies report that the difficulties encountered so far have been largely cultural, rather than legal, and that important issues, such as the manner in which companies are pre-qualified and ranked for projects, are now being addressed by the Korean Government. However, firms still report problems with attempts to renegotiate accepted bid prices, as well as with licensing and bonding procedures.

Three separate licenses are available to foreign companies: construction, construction supervision and design. The requirements associated with these licenses are burdensome because they involve hundreds of pages of documentation. Few of the laws and regulations on licensing or the application forms have been translated into English. Also, prior to obtaining a license, an applicant must consult with a number of agencies, each of which has a different interpretation of the licensing rules. The Korean Government has said that it will (1) prepare English language versions of its license application procedures and (2) streamline and relax some licensing qualification procedures and requirements. U.S. firms report that the situation is improving, but that more needs to be done.

Foreign companies are required to deposit $800,000 as a bond with the Korean Construction Mutual Aid Association in order to obtain a construction license. This requirement significantly increases the start-up costs of foreign companies interested in applying for a construction license in Korea. The Korean Government has stated that the cash bond will be reduced annually and will be abolished by 2000.

Advertising

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. During the current economic downturn, airtime supply exceeds demand, and foreign firms report that KOBACO is demonstrating considerable versatility in offering more flexible packages to meet advertisers' needs. American firms report that KOBACO has significantly increased the availability of air time in lengths other than the Korean standard of 15 seconds, but that the pricing for non-standard time-lengths is financially unattractive. U.S. firms also note that KOBACO has reduced the standard offered package to one month, but spot buying is still allowed only when there is unsold air time, limiting advertisers' ability to run short-term campaigns and to tailor their media delivery. Although the government proposed allowing in-program advertising, the National Assembly has rejected the proposal.

The Korean Broadcasting Commission (KBC) controls advertising censorship procedures, which are non-transparent. The laws and regulations laying out these procedures are very broad and therefore allow considerable subjectivity in interpretation. All television and radio advertising has to be first submitted in its final, fully-produced form for censorship by the KBC, rather than at the "storyboard" stage. Given the unpredictability of the censorship process, this adds considerably to the risk and costs of developing new advertising campaigns and of introducing new products.

In some product categories, *e.g.*, cosmetics, MHW requires that advertising copy be approved by the local manufacturers association in advance of airing or publication. The approval guidelines are again broadly interpreted, and the process notifies competitors of future marketing activity, including for new products. For cosmetics and pharmaceuticals, "before and after" demonstrations of product effectiveness are not permitted. Direct efficacy claims for pharmaceuticals and OTC medicines are not permitted. This makes the advertisement of superior technology products less effective and ultimately will discourage innovations that are in the best interest of the Korean public.

Korea

Audiovisual

Screen Quota

By requiring that domestic films be shown in each cinema a minimum number of days per year (currently, 146 days with reductions to 106 days possible if certain criteria are met), Korea effectively imposes a screen quota on imported motion pictures. The quota acts as a deterrent to trade and to cinema construction and the expansion of theatrical distribution in Korea.

Foreign Content Quota for Free TV

Korea restricts foreign activities in the audiovisual sector by limiting the percentage of weekly broadcasting time (not to exceed 20 percent) that may be devoted to imported programs.

Foreign Content Quota for Cable TV

Cable channels may devote only 50 percent of air time to foreign sports, science and documentary programs. All other types of foreign programming, including movies, are subject to an even stricter quota of 30 percent. These quotas are applied on a per-channel basis. There are only two movie channels (one basic and one premium) and a content quota. Additionally, cable TV programming and advertising must be translated into Korean, which effectively prevents direct rebroadcasting of satellite transmission by Korean cable TV companies. These restrictions severely limit the market for foreign programming.

Satellite Re-transmission

Korean cable television companies reportedly are re-broadcasting satellite transmissions of foreign programming (including U.S.) without paying user fees/ royalties to the foreign broadcasters. Presently, the Korean Government and Korean firms are operating under the assumption that fees for such re-transmissions need not be paid.

Financial

Insurance

Korea is the second largest insurance market in Asia, after Japan, and the sixth largest in the world, with $67.8 billion in premiums paid in 1997. The environment for foreign insurance companies has improved considerably since Korea first opened its market in 1986. Korea has implemented a series of regulatory changes since its 1996 accession to the OECD. Korea incorporated many but not all of these changes, including expanded market access and national treatment, into its WTO schedule as part of the 1997 Financial Services Agreements. Specifically, Korea committed in practice to liberalize at least some forms of cross-border activity in a wide range of services. However, the Korean Government makes no commitments to do so in its new WTO schedule. The U.S. Government will continue to work with the Koreans to ensure that they meet both their WTO and OECD obligations, and that they follow through on their commitment to the IMF to bind Korea's OECD financial services commitments in the WTO.

The financial crisis that began in late 1997 affected the Korean insurance industry. During 1998, as part of overall financial restructuring, the Financial Supervisory Commission (FSC) – the newly established, unified financial regulatory agency -- revoked the licenses of four life insurance companies and merged two existing surety and fidelity insurance companies on the grounds of insolvency. In addition, 16 life and non-life insurance companies are under FSC-supervised workout programs to enhance their solvency margins though recapitalization, staff reductions and other managerial improvements.

Entry into the life and non-life insurance markets has been gradually liberalized, consistent with Korea's OECD and WTO commitments. Some restrictions remain with respect to partnering with local Korean insurance companies and the hiring of Korean insurance professionals. In April 1998, Korea liberalized insurance appraisal and activities ancillary to the management of insurance and pension funds. Korea has begun to allow brokers to operate, and the brokerage market was opened to foreign firms in April 1998. Several foreign reinsurance firms have since entered the market.

Banking

The Korean banking sector is in the process of undergoing thorough and far-reaching structural reform as part of an agreed program between Korea and the World Bank. The objective of this reform is to ensure that the banking sector operates on a fully commercial, rather than an industrial policy or other non-commercial basis. The Korean Government has committed to refrain from interfering in bank lending and management decisions, except with regard to prudential supervision. During 1998, the Korean Government implemented a major opening of the capital markets to foreign participation. Foreign financial institutions will be allowed to participate in non-hostile mergers and acquisitions of domestic financial institutions. Foreign banks are currently allowed to establish subsidiaries or direct branches.

While a number of the restrictions on foreign financial institutions have been removed, Korea continues to place various limits on the scope of operations of direct branches of foreign banks based on local capital versus parent bank capital reserves. These limits affect (1) loans to individual customers; (2) foreign exchange trading and (3) foreign banks' capital adequacy and liquidity requirements. Foreign banks' operations are subject to lending ratios, requiring them to allocate a certain share of their loan portfolios to Korean companies other than the top five *chaebols* and to small and medium enterprises.

All banks in Korea continue to suffer from a non-transparent regulatory system and must seek approval before introducing new products and services, an area where foreign banks are most competitive. The foreign exchange market continues to be heavily regulated, with tight controls on the introduction of new instruments, a niche where again, U.S. banks would be especially competitive. Some restrictions on foreign exchange trading and capital inflows have been removed. For example, the Korean Government recently allowed foreign banks to increase their swap lines as a way to generate additional foreign exchange, but it remains unclear how long these increased lines will continue. For the present, the Korean Government has indicated that the existing lines will not be decreased for the foreseeable future and may even be increased. The interbank money market is still underdeveloped and is not a stable source of funding for foreign bank activities.

Foreign-based, non-financial businesses in Korea are subject to high-cost procedures and restrictions on their financial activities. Such restrictions are inappropriate for Korea’s level of development and financial sophistication. Virtually all intercompany transfers are subject to a foreign exchange bank’s certification and the requirement to settle via documentary trade finance methods. This process is cumbersome, costly, and unnecessary, particularly for transactions between subsidies.

Korean controls over transactions involving foreign exchange create high costs and excessive risks for multinationals operating in Korea and are disincentives to additional foreign investment. The Korean Government plans, however, to liberalize the foreign exchange control system, deregulating some controls over transactions involving foreign exchange, imports and exports. In September 1998, a new foreign exchange law was approved. The new law, scheduled to take effect in April 1999, calls for a two-stage deregulation of the foreign exchange market aimed at liberalization of primary corporate transactions, including, *inter alia*, capital transfers and bank certification requirements for settling trade finance. Full liberalization of these transactions is scheduled for the December 31, 2000. Beginning in July 1998, the Korean Government deregulated restrictions on capital transactions, including limitations placed on capital imports under deferred payment arrangements.

Securities

There has been considerable liberalization of the securities market in Korea, but foreign securities firms continue to face some non-prudential impediments to their operations. Foreign investment ceilings in Korean stocks have been almost entirely removed. There are no limits on foreign ownership of listed bonds or commercial paper. Restrictions on foreign ownership of any security traded in the local securities market have been lifted. In the case of state-owned companies, the limits now are 25 percent aggregate and one percent individual. These limits are scheduled to be raised, but not completely abolished.

INVESTMENT BARRIERS

The Government of Kim Dae Jung made a strong commitment to create a more favorable investment climate and, consequently, has pressed forward with a number of liberalizations designed to facilitate foreign investment. The centerpiece of this effort has been the new Foreign Investment Promotion Act (FIPA), which became effective on November 17, 1998 (replacing the previous Act on Foreign Direct Investment and Foreign Capital Inducement). The FIPA has (1) increased the number of business sectors that are open to foreign investment so that currently, only 13 remain closed and 18 partially closed to FDI; (2) broadened the scope of tax incentives available; (3) simplified procedures for making an investment and (4) established Foreign Investment Zones. As under the previous law, the Korean Government can only reject a foreign investor's notification if the activity appears on an explicit "negative list" or is somehow related to national security, the maintenance of public order or the protection of public health, morality or safety. The Korean Government is obligated to reject the notification within a certain number of days of filing or the investment is automatically approved.

Other measures which have liberalized the investment environment include the introduction of provisions allowing foreigners to purchase 100 percent of the target company's outstanding stock without consent of its board of directors (which was required until May 1998). The Korean Government also abolished the previous requirement for an investor wishing to purchase 25 percent or more of a publicly traded company's shares to make a tender offer bid to purchase more than 50 percent of the company's shares.

As noted above, capital market liberalizations have included elimination of the ceilings on aggregate foreign equity ownership and individual foreign ownership; lifting of the limits on foreign investment in the government, corporate and special bond markets and liberalization of foreign purchases of short-term financial instruments issued by corporate and financial institutions. With these liberalizations, foreign equity ownership up to 100 percent is permitted in many cases but not all. The Korean Government still maintains foreign equity restrictions with respect to investments in Pohang Iron and Steel Company (POSCO), KEPCO, Korea Telecom, many types of media, schools and beef wholesaling.

Restrictions on the direct purchase of land by foreigners have been removed by a revision to the Alien Land Registration Acquisition Act of 1998. However, parallel agricultural land-use laws were not amended: non-Koreans still cannot produce agricultural products for commercial purpose, nor can agriculturally zoned land be taken out of agricultural production.

Generally speaking, the liberalizations in Korea's investment regime combined with increased opportunities arising from restructuring of the corporate sector and privatization of government-invested corporations have increased U.S. investors' level of interest in Korea. In 1998, new U.S. foreign direct investment accounted for almost one-third of the $8.8 billion in total FDI coming into Korea, according to statistics provided by MOFE. However, additional changes are necessary to significantly improve Korea's attractiveness as a destination for foreign investment, including more extensive tax exemptions for foreign investment, enhanced flexibility in the labor market, improvement in intellectual property protection and a more transparent regulatory environment

Korea has not notified the WTO of any measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs).

ANTICOMPETITIVE PRACTICES

With the advent of the economic crisis, Korea's IMF program, and the Kim Dae Jung Administration, the importance of the Korean Fair Trade Commission's (KFTC's) role as enforcer of Korea's competition law and advocate of competition policy increased dramatically in 1998. The KFTC, with some input from the World Bank, made efforts in 1998 to strengthen the Fair Trade Act with the long term objective of installing a more transparent, rules-based system that is conducive to and consistent with a free and competitive market-based economy. As part of this exercise, the KFTC sought to revise the law to strengthen its penalty/deterrence regime, increase its investigatory powers and revise a range of laws which have permitted collusive behavior. This includes reining in powerful industry associations that have often abused their powers by discriminating against non-members and potential competitors, including U.S. firms. The revised Fair Trade Act passed the National Assembly in January 1999, but it is unclear how much it truly strengthened the KFTC.

The KFTC's deregulation task force has actively participated in the Administration's efforts to cut by nearly half the roughly 11,000 government regulations currently in force. Some of the implementing legislation was passed by the National Assembly in December, but other bills still are pending.

In 1998, the KFTC used its powers to investigate the *chaebol*s, particularly the five largest, to help the government to attain its corporate reform objectives. In the most noteworthy example, the KFTC imposed fines on the "Big Five" in July totaling approximately $60 million for illegally subsidizing subsidiaries. The *chaebols* are appealing this decision through the court system. In February of 1999, the KFTC also fined five mid-ranking *chaebol*s approximately $15 million for illegally subsidizing subsidiaries.

Despite the heightened level of enforcement activity by the KFTC, it still has a weak position in the Korean Government relative to the powerful industrial ministries. For competition policy to take root in Korea, a stronger KFTC is a prerequisite. The KFTC's opaque and arguably uneven application of the Fair Trade Law also undercuts its credibility in Korea and abroad. For example, the KFTC seems to be taking a rather passive attitude towards reviewing the so-called "Big Deals" (corporate swaps being pushed by the Korean Government), which would seem to raise competition policy issues in Korea. U.S. industries, including semiconductor and telecommunications firms, have raised concerns about reports that the Korean Government, as part of the "Big Deal," is spurring consolidation of different *chaebols'* business lines in a manner that impedes open competition in Korea.

ELECTRONIC COMMERCE

There are no reported trade restrictions on electronic commerce in Korea.

Korea passed the Electronic Commerce Basic Transaction Act on January 5, 1999. This act codifies authorization of electronic signatures as legally binding on consumers and businesses. Additionally, this act encourages private development of electronic commerce in Korea. Equally important is Korea's commitment not to impose customs duties on the flow of information by electronic means. This commitment also is indicated in the U.S./Korea Joint Statement on Electronic Commerce signed in November 1998. Thus, Korea is one of the few countries with which the United States has joint statements (the list includes, the European Community, France, the United Kingdom, the Netherlands, Japan and Ireland). These bilateral statements reenforce the commitment to having the private sector lead in fostering the growth of electronic commerce.

OTHER BARRIERS

Lack of Transparency

Many Korean trade-related laws and regulations lack specificity. Their implementation is directed by internal guidance, which is developed by the relevant ministries and rarely published. Despite this guidance, Korean port officials exercise a great deal of discretion in applying the broad rules in the laws and regulations. This leads to inconsistency of application and sometimes the most trade restrictive application, as well as uncertainty among business interests.

Imported food products remain particularly susceptible to capricious interpretation of ambiguously worded labeling and product categorization standards. Headquarter intervention is too often required to clear a product through port inspection, at great time and monetary cost to the importer and ultimately to the consumer.

The Korea Food and Drug Administration (KFDA) undertook an ambitious program last year to rewrite the country's vaguely worded food-related codes to bring them into conformance with international standards by the end of 1999. This effort is commendable. When completed, a significant number of product clearance problems should cease as port inspectors should be operating with clear guidance outlined in the revised Food Code, Food Additives Code and food labeling standards. The KFDA's approach to revamping Korea's food-related codes includes soliciting input from all available sources, both domestic and international, via employment of an extended comment period (70 days). Other agencies should emulate this model to bring clarity and transparency to their respective regulations to improve market access for both domestic and imported products, thereby benefitting Korean consumers.

In the past, the Korean Government has failed to produce advance or timely notice of changes to laws and regulations, either in domestic official publications or in the WTO. This has precluded interested parties from commenting on the effect of the proposed changes and made it difficult or impossible for foreign companies to adjust to the new rules when they are implemented.

Overall, some progress has been made on such transparency issues, but additional improvement still is necessary to ensure that lack of transparency no longer impedes trade.

Frugality Campaigns and Anti-import Bias

Frugality campaigns, ostensibly directed at individual consumption but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. The Korean Government has denied involvement in the anti-import aspect of the frugality campaign, but U.S. firms complain that Korean officials have taken arbitrary actions that have impeded imports, and Korean Government agencies have regularly reported on imports of "luxury goods" such as sports equipment. However, in 1998, the Korean Government sent written notices to agencies and civic groups noting that an anti-import campaign was not helpful to Korea's efforts to overcome its economic crisis and warning against taking measures that could be perceived as discriminating against imports. Accordingly, in the 1998 U.S.-Korea MOU on trade in motor vehicles, Korea agreed to quickly address anti-import activity aimed at foreign vehicles, to work to preclude discrimination against imported vehicles, especially through tax audits, and to promote a better understanding among its citizens of the benefits to the Korean consumer and economy of free trade and open competition between foreign and domestic products, including motor vehicles.

President Kim Dae Jung has repeatedly called on Koreans to engage in "healthy consumption" and to base purchasing decisions on price and quality, rather than country of origin. However, a June poll by an international marketing firm revealed that 69 percent of Koreans still believed that purchasing foreign products hurts Korea. This persistent economic nationalism will continue to create fertile ground for frugality campaigns, particularly after the economy recovers and consumption resumes growth.

Internal Supports

Under the Uruguay Round, Korea agreed to reduce, in ten equal installments, its domestic support (AMS) for agricultural products from 2.182 trillion *won* in 1995, to 1.49 trillion *won* in 2004. If the Korean Government does not reduce its large domestic rice and beef purchases and pork and beef production incentives, it will have difficulty meeting its AMS commitments in coming years.

Motor Vehicles

In the October 1, 1997 Super 301 report to the Congress, the USTR identified Korean barriers to motor vehicles as a priority foreign country practice. Specific Korean practices of concern that were cited included an array of cumulative tariff and tax disincentives disproportionately affecting imports, onerous and costly auto standards and certification procedures, auto financing restrictions and a cumulative climate of bias against imported vehicles. On October 20, 1997, the USTR initiated a Section 301 investigation with respect to certain acts, policies and practices of the Government of the Republic of Korea that pose barriers to imports of U.S. autos into the Korean market.

After intense bilateral negotiations, on October 20, 1998, the U.S. and Korea concluded a Memorandum of Understanding (MOU) to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others; (3) adopt a self-certification system by 2002; (4) streamline its standards and certification procedures; (5) establish a new financing mechanism to make it easier to purchase motor vehicles in Korea and (6) continue to actively and expeditiously address instances of anti-import activity.

Following the negotiation of this MOU, the USTR determined that certain acts, policies and practices of the Government of Korea related to exports of U.S. motor vehicles are unreasonable and discriminatory and burden or restrict U.S. commerce, but recognized that the Korean Government had agreed to take several measures to resolve the matters under investigation. Thus, the USTR decided on October 20, 1998, to terminate the investigation and to monitor the Korean Government's implementation of these measures to eliminate those trade practices. The first formal review of Korea's implementation of the 1998 MOU will take place no later than April 30, 1999.

Korea

The Korean Government has undertaken structural reforms of its financial and corporate sectors as part of its macroeconomic stabilization plan. If implemented fully and faithfully, these reforms should ensure that the Korean motor vehicle sector operates according to market principles rather than industrial policy cues. The U.S. Government will continue to carefully monitor the status of these structural reforms to ensure that U.S. motor vehicle producers will face fair market-driven competition from their Korean competitors.

Pharmaceuticals

Korea's national health insurance system does not provide imported drugs with national treatment with respect to listing and pricing on the Korean national health insurance reimbursement schedule and discourages hospitals and other large end-users from buying imported drugs. The Korean system allows hospitals, clinics and pharmacies to profit from reimbursement from domestic products, but not from imported products. Dispensers of imported products also must comply with additional administrative procedures for reimbursement. Recently, some Korean hospitals have engaged in "buy national" behavior by delisting foreign pharmaceuticals from formularies and inventories.

U.S. pharmaceutical producers face other market access barriers in Korea including requirements for duplicative testing, lack of adequate and effective data protection against unfair commercial use and limitations on manufacturing. Finally, lack of coordination between Korean health authorities in MHW and KFDA and Korean IPR authorities allows manufacturers of patent infringing products to gain approval for the launch of their products into the Korean market to the commercial detriment to the holders of the patents.

The U.S. Government will continue to press the Korean Government on pharmaceuticals trade issues until U.S. concerns are fully and satisfactorily addressed.

Cosmetics

Impediments to entry and distribution of foreign cosmetic products in Korea include (1) KFDA approval required for imports of the same cosmetic products if they have different countries of origin; (2) the Korean Government's delegation of authority to the domestic industry association to screen advertising and information brochures prior to use; (3) mandatory provision of proprietary information on imports to Korean competitors; (4) redundant testing and (5) burdensome import authorization and tracking requirements. The U.S. Government cited Korea's cosmetics-related measures as a bilateral priority in the 1997 Super 301 report. (See also "Standards and Conformity Assessment Procedures" and "Advertising.")

The U.S. Government will continue to press the Korean Government on cosmetics trade issues until U.S. concerns are fully and satisfactorily addressed.

Steel

The United States has been concerned with the Korean Government's involvement in and support for the steel sector and for steel-using industries. These policies have led to substantial uneconomic investments in steel and related sectors, and resulted in substantial steel overcapacity, which has recently been severely exacerbated by the reduced demand for steel in Asia and elsewhere. Korean-Government-owned banks have extended substantial "soft loans" to several steel producers, apparently without regard for creditworthiness. Hanbo Steel, one of the largest recipients of such loans, declared bankruptcy in 1997. Hanbo's collapse is believed to be one of the leading causes of the financial crisis. In 1998, the U.S. and Korean Governments exchanged letters which made clear that the sale of Hanbo Steel would be market based and managed by a reputable international financial company.

The new Korean Government has indicated its intention to fundamentally change the policies discussed above and to remove government interference from the steel sector. In this regard, the Korean Government has announced its intention to privatize POSCO. The U.S. Government is closely monitoring the sale of Hanbo, as well as the ongoing privatization of POSCO, now the world's largest steel producer. The Korean Government has outlined a plan for market-based production and management of POSCO and for the sale of Korea Development Bank shares in the company by the end of 1999. Nevertheless, POSCO's size and current monopoly producer status in Korea of some key steel products continue to raise concerns of possible unfair and anticompetitive practices. The United States is urging the Korean Government to fully implement intended reforms and to vigorously implement competition laws, particularly in the steel sector where concerns have been raised over a number of years.

Telecommunications

In the past, U.S. equipment and services companies encountered a significant number and range of impediments in the Korean telecommunications sector. The Korean Government has targeted the telecommunications sector for industrial promotion, which explains the chronic nature of U.S. market access problems in this sector. Only a few U.S. firms operate in the Korean telecommunications service market as minority investors.

On July 26, 1996, USTR designated Korea as a Priority Foreign Country under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act. Bilateral negotiations in 1997 resulted in an agreement that considerably clarified government policy and guarantees of non-interference in the procurement process. In a July 14, 1997, policy statement, Korea announced that (1) the government did not require use of local products when making decisions on licensing or spectrum allocation; (2) the licensing process would be transparent and non-discriminatory; (3) foreign firms would receive national treatment within the scope of Korea's commitments and in accordance with its obligations under the WTO and (4) private sector firms would be free to make their procurement decisions independently. The U.S. Government continues to bring any instances of non-compliance by Korea Telecom to the attention of the Korean Government.

Korea's commitments under the WTO Basic Telecommunications Agreement enhance opportunities for partial foreign ownership of Korean telecommunications operators. Because of the need for foreign investment in Korea, the government may accelerate the schedule for market opening measures agreed under this Agreement. (See also "Government Procurement.")

The current administration's efforts to expand foreign investment in telecommunications companies have encountered resistance from the National Assembly, which reflected popular fear of foreign investors obtaining management control of Korea's basic telecommunications service companies. In its accession to the WTO, Korea agreed to raise the ceiling on foreign equity ownership from 33 percent to 49 percent in 2001. The Korean Government proposed advancing the scheduled increase to 1998, but the relevant sub-committee rejected the proposal. The government plans to re-submit the proposal, and believes the Assembly will approve the increase in the second half of 1999, but it is not clear what implementation date will be selected.

The proposal did not apply to government-owned Korea Telecom (KT), in which the ceiling on foreign investment remains 20 percent.

U.S. industry has recently become concerned about press reports indicating that the Korean Government is pressuring private cellular telecom operators and wire-line companies to consolidate under the Big Deal programs. The Korean Government has indicated that it is not its policy to urge such consolidations. The U.S. Government will closely monitor the situation.